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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

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SUMMARY RECORD OF THE 1269th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 18 March 1998, at 10 a.m.

Chairman: Mr. ABOUL-NASR

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The meeting was called to order at 10.15 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

World Conference against Racism and Racial Discrimination, Xenophobia and Related Intolerance

1. Mr. NOBEL suggested that the Committee should decide before the end of the present session how it intended to contribute to the preparations for the World Conference against Racism and Racial Discrimination, Xenophobia and Related Intolerance which was to be held in 2001. He would like some minutes to be set aside for the Committee to consider the matter so that it could start taking the necessary steps straightaway.

2. Mr. de GOUTTES supported that suggestion. He felt that the Committee was not sufficiently involved in the preparations.

3. The CHAIRMAN said he believed that the subject had already received attention, but he invited the two preceding speakers to consult the Rapporteur of the Committee, Mr. Banton, as to the measures already taken in that regard. He suggested devoting a few minutes to the question at the beginning of the next meeting.

4. It was so decided.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Draft concluding observations of the Committee on the thirteenth and fourteenth periodic reports of Ukraine (CERD/C/52/Misc.35, future CERD/C/304/Add.48) (document circulated at the meeting in English only)

5. Mr. van BOVEN (Country Rapporteur) said that, before considering the draft paragraph by paragraph, he would like to make two typographical corrections: a comma should be inserted before the word "notably" in the last line of paragraph 11, and the words "article 7 of" should be inserted before "the Convention" in paragraph 18.

6. Mr. DIACONU pointed out that the word "Tatars" had been written as "Tartars" several times in the text. That mistake should also be corrected.

Paragraphs 1 to 4

7. Paragraphs 1 to 4 were approved.

Paragraph 5

8. Mr. GARVALOV said that he was a keen supporter of the European Framework Convention for the Protection of National Minorities, but he wondered whether the Committee really had grounds to note with satisfaction the State Party's intention to ratify it. Firstly, intending was not the same as doing and secondly, the European Framework Convention was only a regional instrument.

9. The CHAIRMAN, speaking as a member of the Committee, fully supported the remarks made by the preceding speaker. The Committee's satisfaction at the State Party's potential accession to a European convention seemed rather unfair to non-European countries that did not have that opportunity.

10. Consequently, he felt that the wording of the paragraph was ill-conceived. If the other members of the Committee wanted to keep it as it was, he would wish the reservations he had expressed to appear in the summary record.

11. Mr. NOBEL saw no objection to keeping paragraph 5 as it was. There was nothing to prevent the Committee from applauding the fact that such and such a State Party had joined a regional instrument to protect minority rights. It would be no less pleasing if an African country had ratified an Organization of African Unity treaty on the same issue.

12. The CHAIRMAN agreed that the wording should remain as it was provided that his own remarks and those of Mr. Garvalov were reflected in the summary record.

13. It was so decided.

14. Paragraph 5 was approved.

Paragraph 6

15. The CHAIRMAN, again speaking as a member of the Committee, observed that the reference to the creation of the post of Ombudsman was perhaps a little too specific. He was not denying that an ombudsman could help the protection of human rights and the implementation of the Convention, but the office was a typically northern European institution that had come from the Scandinavian countries. In other countries, different systems, either national committees or other bodies, served to protect human rights and combat discrimination. Once more, the reference to a specifically European system bothered him.

16. Mr. RECHETOV saw no reason why the Committee should not welcome the establishment of the post of Ombudsman in Ukraine. However, the Committee should not expect too much with regard to the institution's efficiency; as far as he knew, the post had not been given to someone of high rank with a reputation as an independent expert on human rights.

17. Mr. NOBEL endorsed Mr. Aboul-Nasr's opinion. What was important in the present case was the establishment of an institution responsible for protecting human rights. It did not really matter what the institution, which of course depended on its cultural context, was called; perhaps the beginning of the paragraph could be reworded to make it less specific.

18. Mr. RECHETOV suggested that the word "authorized" should be replaced by "independent".

19. The CHAIRMAN questioned whether an expert appointed by the Supreme Council was really independent.

20. Mr. de GOUTTES said he had no objection to replacing "authorized" by "independent". However, he wanted to keep the wording at the beginning of the paragraph, in which the Committee welcomed the creation of the post of Ombudsman. He drew attention in that connection to General Recommendation XVII on the establishment of national institutions to facilitate the implementation of the Convention (HRI/GEN/1/Rev.3), which the Committee had adopted at its forty-second session.

21. The creation of the post of Ombudsman was fully in accordance with that recommendation.

22. Mr. van BOVEN pointed out that paragraph 17 of the draft stated that the Committee would like additional information on cases of discrimination brought before the Ombudsman. It should therefore be mentioned that the post of Ombudsman had been established. He saw no problem, however, in replacing "authorized representative" by "independent representative".

23. It was so decided.

24. Paragraph 6, as amended, was approved.

Paragraph 7

25. Paragraph 7 was approved.

Paragraph 8

26. The CHAIRMAN questioned whether the statement in the first sentence that the Committee's previous Concluding Observations had not been taken into consideration by Ukraine in preparing its thirteenth report was not going too far. Moreover, he thought that the issue had been raised during the discussion with the delegation.

27. Mr. van BOVEN said that, as far as he remembered, the delegation had not commented on that issue. However, to give the delegation the benefit of the doubt, he suggested inserting the words "many of" in the first line before the words "the Committee's previous Concluding Observations".

28. It was so decided.

29. Paragraph 8, as amended, was approved.

Paragraphs 9 to 14

30. Paragraphs 9 to 14 were approved.

Paragraph 15

31. The CHAIRMAN asked Mr. van Boven to explain the legal arguments the Committee should use to commit Ukraine to ensuring that questions concerning the citizenship of repatriated members of minorities, inter alia the Crimean Tatars, were settled as quickly as possible.

32. Mr. van BOVEN said that adding the words "on the basis of international standards" to the end of the second sentence might make that point clear.

33. Mr. SHERIFIS asked Mr. van Boven to explain whether the phrase "to afford them just and adequate reparation where appropriate" covered the right of the persons involved to recover their property, an important consideration which he felt had been overlooked.

34. Mr. RECHETOV said he had no objection to Mr. van Boven's proposal, but he feared that, if international standards were mentioned, the addressees of the Committee's recommendations might not necessarily interpret them in the same way as the members of the Committee.

35. Mr. van BOVEN, replying to Mr. Sherifis, said that he had in fact spoken of the restitution of the property of repatriated members of minority groups and had tried to cover that point by referring to the Committee's General Recommendation XXII, on restitution, and by using the term "reparation". Furthermore, the draft articles of the International Law Commission (A/51/10) on State responsibility used the term "reparation" in the broad sense, which covered restitution in kind, compensation, satisfaction and non-repetition. He had therefore felt that if restitution were not possible, reparation should at least be made. Furthermore, "reparation" was the term used in the Convention.

36. He added, in reply to Mr. Rechetov, that he had taken account of the fact that Ukraine had amended its citizenship laws in 1997 and that the new legislation should, according to the Conference on Security and Cooperation in Europe, help provide solutions. Nevertheless, if it were felt that the wording "international standards" was too vague, the phrase "in a just manner" might be added after the words "as soon as possible".

37. Mr. RECHETOV agreed to Mr. van Boven's suggestion.

38. Mr. SHERIFIS thanked Mr. van Boven for his explanations. He suggested that the words "where appropriate" should be followed by the words "if the restitution of their property is not any more possible".

39. Mr. van BOVEN said he felt that proposal was not really acceptable, since the notion of reparation covered that of restitution. The word "reparation" would then have to be replaced by "compensation".

40. Mr. SHAHI said he preferred Mr. van Boven's original text. He found Mr. Sherifis' proposed alteration unsatisfactory because the expression "compensation where appropriate" might give the impression that compensation was not granted in every case. In addition, that wording would deprive States Parties of the possibility of exercising their discretion and would have the undesirable effect of curtailing the rights of victims.

41. Mr. RECHETOV considered that it would be preferable to employ the term "reparation" proposed by Mr. van Boven. It should be borne in mind that, frequently, the property in question consisted of rudimentary or dilapidated dwellings. In such cases, demands for restitution would not be realistic and might give rise to further conflicts.

42. The CHAIRMAN said that it would be best to be concise and retain the original wording suggested by Mr. van Boven. Moreover, the Committee might include a footnote in the recommendations, referring the State Party to the Committee's General Recommendation XXII, and ensure that the discussion was duly reflected in the summary record of the meeting.

43. Mr. van BOVEN pointed out that the reference text in question was not the entire General Recommendation XXII, but only its subparagraphs (c) and (d). He emphasized that he had worded the draft concluding observations with considerable care, drawing on his experience in various aspects of the matter of reparation. In the light of the discussions, and upon mature reflection, he considered that the words "adequate reparation where appropriate" provided the best solution in all respects.

44. Mr. SHERIFIS accepted the Chairman's proposal that the concluding observations should contain a footnote drawing the attention of the State Party to paragraph 2, subparagraphs (c) and (d), of General Recommendation XXII, on the understanding that the concerns expressed by the members of the Committee would be duly reflected in the summary record of the meeting.

45. Mr. RECHETOV, while not opposing the Chairman's proposal, feared that it might create a precedent. He reiterated his concern about the manner in which General Recommendation XXII might be interpreted.

46. The CHAIRMAN said that, if he had understood correctly, the Committee agreed that the words "as soon as possible" would be followed by the words "in a just manner" and that a footnote would be included in the text of the Committee's concluding observations on Ukraine.

47. It was so decided.

48. Paragraph 15, as amended, was approved.

Paragraph 17

49. Mr. RECHETOV said that in 1994, in regard to the declaration provided for in article 14 of the Convention, he had personally ensured that the commitment was made. The declaration had been made on behalf of the Soviet Union as a whole but Ukraine, when it ratified the Convention, had assumed the obligations formerly contracted by the Soviet Union under article 14.

50. After an exchange of views between Mrs. SADIQ ALI, Mr. van BOVEN and Mr. BANTON, paragraph 17 was approved.

Paragraph 18

51. The CHAIRMAN said that the paragraph should begin with the words "in the light of article 7 of the Convention".

52. Mr. DIACONU drew the Committee's attention to the fact that article 7 did not commit States Parties to organizing teaching in the mother tongue of ethnic minorities, but simply to providing teaching on human rights with a view to combating prejudices that led to racial discrimination. Moreover, it would be totally excessive and unrealistic to expect any State to offer teaching in all its minority languages. The Committee might, however, require the State Party to provide education and teaching in the mother tongue of minorities, wherever possible.

53. Mr. van BOVEN, referring to Mr. Diaconu's comments, suggested that the words "in the light of article 7 of the Convention" at the beginning of the paragraph should be deleted, and that the words "in the mother tongue of all minorities" at the end of the paragraph should be replaced by the words "in the mother tongue of minorities, wherever possible".

54. Paragraph 18, as amended, was approved.

55. Paragraph 19 was approved.

56. The draft concluding observations concerning the thirteenth and fourteenth periodic reports of Ukraine as a whole, as amended orally, were adopted.

Draft concluding observations of the Committee on the eleventh to fourteenth periodic reports of Yugoslavia (CERD/C/52/Misc.39, future CERD/C/304/Add.50) (document circulated at the meeting in English only)

57. Mr. RECHETOV (Country Rapporteur) emphasized that it would be no easy task to adopt the text of the draft concluding observations under consideration. In his capacity as Rapporteur, he had introduced a number of minor changes to the draft prepared by the Secretariat. However, he had received some 50 proposed amendments, some of which contradicted each other. He had done his best to take them into account, but it was for the Committee to take the final decision.

Paragraphs 1 and 2

58. Paragraphs 1 and 2 were approved.

Paragraph 3

59. Mr. RECHETOV pointed to an error in the second sentence of the paragraph, in which "1995" should read "1993".

60. Paragraph 3, as amended, was approved.

Paragraphs 4, 5 and 6

61. Paragraphs 4, 5 and 6 were approved.

Paragraph 7

62. Mr. SHAHI asked what information justified the statement that "significant" progress had been made towards the normalization of the health-care system.

63. Mr. RECHETOV replied that all the information he had received, including information from Albanians and Serbs of Kosovo and Metohija, concurred on that point; no one had questioned paragraph 7 when the periodic report of Yugoslavia was being considered.

64. The CHAIRMAN believed nevertheless that the word "significant" was somewhat too strong, and suggested that it should be replaced by "some".

65. Mr. de GOUTTES pointed out that the good-offices mission itself had spoken only of "some" progress.

66. Paragraph 7, as amended, was approved.

Paragraph 8

67. Mr. SHAHI said he felt that it would be appropriate to speak of the protection of human rights as well as of the protection of the rights of national minorities, and to amend the text accordingly. The draft expressed the hope that Kosovo and Metohija would come to enjoy a greater autonomy, but he failed to understand how a non-existent autonomy could grow larger; he therefore suggested that the words "a greater" preceding the word "autonomy" should be deleted.

68. Mr. GARVALOV said that he had no comment to make regarding the first sentence of paragraph 8 if it had in fact been taken from a statement made by the Republic of Serbia; what was at issue there was the protection of collective rights. In the second sentence, however, the concept of a greater autonomy should be replaced by that of the re-establishment of autonomy.

69. The CHAIRMAN observed that, in its existing wording, the second sentence of the paragraph would be more appropriately situated in the part of the concluding observations devoted to suggestions and recommendations.

70. Mr. DIACONU asked the Secretariat to verify that the reference to the protection of human rights, and not just of the rights of minorities, did in fact appear in the statement made by the Republic of Serbia before incorporating it in the text. Autonomy, meanwhile, could become greater if it was accepted that in 1989 Serbia had offered the province an autonomy of sorts, of a more limited nature than before. Since the right to autonomy did not in fact exist, it would be best to allow those concerned to negotiate as they saw fit.

71. The CHAIRMAN said that he took a different view. The Serbian Government had not in fact "offered" but rather "imposed" a new structure. Moreover, in the past the Committee had frequently appealed for the restoration of the rights of given populations, such as the Palestinians or the Cypriots, and it should not ignore the catastrophic situation at present prevailing in Kosovo.

72. Mr. YUTZIS said that it should be indicated that a particular situation, which constituted a right, should be restored and that the person responsible for denying that right, the Serbian Government, should be identified. That statement should appear in part C and part E.

73. Mr. SHAHI considered that not only should the words "a greater" be deleted from the second sentence, but also the whole of the end, which read "as a means of better enjoyment of human rights by everyone". Obviously, the Committee supported autonomy, and not the separatist claims which were being voiced in Kosovo. If the Committee failed to express its opinion on that point clearly, it would give the impression that it remained aloof from a situation that was a cause of concern to international opinion everywhere.

74. Mr. BANTON suggested that the text to be approved by the Committee for paragraph 8 should be confined to the first sentence of the paragraph.

75. Mr. RECHETOV said that all the views just expressed were defensible. He was surprised, however, by the notion that the protection of minority rights was less important than the protection of human rights. It was true that those who had drafted the International Covenant on Civil and Political Rights had considered that there were two kinds of countries, those which recognized collective rights and those which recognized the rights of members of national minorities as individuals. In his view, the protection of the rights of national minorities should encompass consideration of the full range of human rights, both collective and individual.

76. Mr. DIACONU agreed that it was essential to restore every human right that had been denied but, he repeated, autonomy was not a human right and no instrument existed which guaranteed such a right; it was simply one means of organizing a State. The countries of Eastern Europe in particular, for their part, had agreed that ethnic groups did not have a right to autonomy. It would not be appropriate to impose institutions on Eastern Europe that it did not itself intend to establish.

77. The CHAIRMAN observed that, with independence granted to the Croatians, Eastern Europe had far surpassed autonomy.

78. Mr. YUTSIS said that, in speaking earlier about the paragraph under discussion, he had not intended to suggest that autonomy was a human right, but that the level of protection accorded to a population's human rights might derive from the level of autonomy it enjoyed. The Committee could look to the example of Serbia which, by limiting autonomy, had also limited the enjoyment of human rights.

79. Mr. de GOUTTES commended Mr. Rechetov for reminding the Committee that there had traditionally been two groups of States in the United Nations, those which recognized collective rights and those which recognized the individual rights of persons belonging to minorities - which could, moreover, exercise their rights collectively; there was no need, however, for the Committee to take a position on the relative value of each of those two systems, and the second sentence of paragraph 8 did not necessarily imply the existence of collective rights.

80. The CHAIRMAN suggested that the Committee should approve only the first sentence of the paragraph under discussion as paragraph 8, to the exclusion of any reference to human rights, since no mention of them was made in the statement of the Government of the Republic of Serbia.

81. It was so decided.

82. Paragraph 8, as amended, was approved.

Paragraph 9

83. Paragraph 9 was approved.

Paragraph 10

84. Mr. SHAHI said that the expression "not fully guaranteed" was not the most apt, because although it could be applied to certain minorities, it was not sufficiently applicable to access to education by the Albanian minority. A formulation should be found which better reflected reality.

85. The CHAIRMAN observed that the mention of allegations in the first sentence of the paragraph greatly weakened the text.

86. Mr. RECHETOV said first that Mr. Shahi's concern was justified if Kosovo alone was taken into consideration, but the paragraph dealt with all minorities; in Kosovo, the situation was much more complex.

87. He proposed that the word "allegations" should be replaced by the word "indications", or by some other word which carried that meaning in English, and that the paragraph should be approved on the understanding that it did not refer to Kosovo.

88. Mr. GARVALOV confirmed that paragraph 10 concerned all the minorities mentioned in the report of the State Party except for the Albanians of Kosovo. Furthermore, since the information it contained consisted of well-known facts, it would be preferable to use the word "reports" rather than the word "allegations".

89. As worded, the paragraph grouped all minorities together, whereas some, for example the Hungarian minority, had full access to education, information and cultural activities in their own languages. The phrase "access of minorities" should therefore be replaced by "access of certain minorities".

90. Mr. SHAHI stressed that it should be clearly understood that the paragraph did not refer to the Albanian population.

91. The CHAIRMAN invited the members of the Committee to approve paragraph 10, as amended, with the exception of the final three words ("not fully guaranteed"), which should remain unchanged.

92. Paragraph 10, as amended, was approved.

Paragraph 11

93. Paragraph 11 was approved.

Paragraph 12

94. Mr. SHAHI requested further information concerning the goodwill mission mentioned in the paragraph.

95. Mr. RECHETOV said that the mission had been instructed to study a number of questions, particularly in the areas of education and health care, and to promote dialogue between the authorities and the Albanian community of Kosovo and Metohija, with a view to enhancing the implementation of the Convention.

96. Mr. GARVALOV stressed that the mission had visited the State Party to promote dialogue and that it had emphasized two areas, education and health care. Paragraph 12, as worded, reflected precisely what the mission had accomplished. In that connection, the State Party had emphasized that the goodwill mission had played a useful role.

97. The CHAIRMAN suggested that paragraph 12 should be approved as it stood.

98. It was so decided.

99. Paragraph 12 was approved.

Paragraph 13

100. Paragraph 13 was approved.

101. Mr. YUTSIS suggested that the paragraph should indicate that the army as well had made disproportionate use of force.

102. The CHAIRMAN therefore proposed that the words "and the military" should be inserted after the words "law enforcement agencies".

103. Mr. van BOVEN said that the word "although" at the start of the paragraph presented a problem, because it could be seen as justifying, to a certain extent, that which was denounced thereafter. He therefore proposed that the clause "although the situation in the province of Kosovo and Metohija has been seriously aggravated in recent weeks" should be deleted; that the paragraph should begin, "the Committee notes ..."; and that the phrase "in the province of Kosovo and Metohija" should be inserted after "the Albanian population".

104. Mr. GARVALOV proposed that the word "notes" should be replaced by "is concerned".

105. Following an exchange of views between Mr. RECHETOV and Mrs. ZOU, the CHAIRMAN read out the paragraph as amended: "The Committee is concerned that disproportionate use of force by law enforcement agencies and the

military against the Albanian population in the province of Kosovo and Metohija has resulted in numerous violations of the right to life, destruction of property and displacement".

106. Paragraph 14, as amended, was approved.

Paragraph 15

107. Mr. YUTSIS said that, in his view, the first sentence as worded implied that the Committee assumed that terrorist actions did in fact exist; he therefore proposed its deletion. In addition, the final sentence did not seem to follow the logic of the paragraph.

108. Mr. van BOVEN said that, in a sense, the Committee was lending credence to Government terminology by calling the Albanian dissidents terrorists. It should be remembered that Governments often vilified their opponents by calling them terrorists. President Mandela, who was today a hero, had in his day been denounced as a terrorist. He therefore supported the proposed deletion of the first sentence, and suggested that the word "terrorist" should be put in inverted commas each time it appeared in the text, and that the words "by any means" should replace the words "by the fight against terrorism".

109. The CHAIRMAN, speaking as a member of the Committee, said that the Committee, in submitting its report to the General Assembly, should set out the position of the State Party, since it should be made clear that the State Party did not necessarily endorse the report.

110. Mr. DIACONU said he was not opposed to deleting the first sentence and to putting the word "terrorist" in inverted commas each time it appeared. In his view, moreover, the content of the last sentence was not a matter for the Committee but for the United Nations Security Council.

111. The CHAIRMAN suggested that the Committee should continue its examination of paragraph 15 and the subsequent paragraphs of its concluding observations on the fourteenth periodic report of Yugoslavia at the next meeting.

112. It was so decided.

The meeting rose at 1 p.m.